IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1447 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORP. - Appellant(s)
Versus
PATEL ISHWARBHAI HARIDAS & 4 - Defendant(s)

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Appearance :

MR VIREN G DAVE for MR YOGESH S LAKHANI for Appellant(s) : 1,
MR AN PATEL for Defendant(s) : 1,
SERVED BY RPAD - (N) for Defendant(s) : 2, 4,
NOTICE SERVED for Defendant(s) : 3,
NOTICE UNSERVED for Defendant(s) : 5, [Deleted]

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 16/01/2007

ORAL JUDGMENT

Mr. Viren G Dave, learned advocate appearing for Mr. YS

Lakhani for the appellant, seeks permission to delete respondent no. 5. Permission is granted. Respondent no. 5 stands deleted from the proceedings.

2. The Gujarat State Road Transport Corporation has filed this appeal to challenge judgment and award made by Motor Accident Claims Tribunal [Main] Mehsana dated 6/4/1994 in M.A.C. Petition No. 1238 of 1988. By the said award the Claims Tribunal has granted compensation of Rs.92,200/- together with running interest at the rate of 15% per annum from the date of application till realization and proportionate costs to the original claimants. The appellant has filed this appeal on the ground that the compensation awarded to the original claimants who are respondents nos. 1 to 4 is excessive and it is required to be reduced.

3. The accident in question took place on 29/4/1988. On that day the deceased was waiting for bus at Unjha Bus Stand. At that time respondent no. 5, who was driver of the bus bearing registration no. GRU 9505 and owned by appellant took the bus in reverse and in the process knocked down the deceased. She was crushed against the iron railing. She sustained serious injury and, therefore, she was taken to Cottage Hospital at Unjha and thereafter while she was being brought to Civil Hospital at Ahmedabad, on way she expired. Her husband and three sons therefore, filed the claim petition for compensation of Rs.1 lac.

3.1. The claim was resisted by appellant by filing written statement at Exh. 21. It denied all the allegations made in the application. According to it, when the bus was being taken in reverse, the deceased in a hurry to board the bus, rushed towards it and dashed against it. She received serious injuries. Hence, according to the appellant, the deceased was solely responsible for the accident.

3.2. On the basis of the evidence produced before it, the Tribunal held respondent no. 5, the driver of the offending bus, liable for causing the accident. The Tribunal also found that the deceased was a social worker and she was also doing household work as well as she was rendering service to her husband in cattle breeding and farming. The Tribunal, therefore, assessed the income of Rs.1,000/- per month. The deceased was aged about 65 years. The Tribunal assessed the loss of dependency benefit of Rs.800/- and applied the multiplier of 7 and determined the loss of dependency benefit at Rs.44,800/- so far as the respondent no. 1 was concerned and Rs.22,400/- so far as the sons were concerned. The Tribunal also considered various other factors and awarded compensation under the head of loss of consortium, the conventional amount, etc., and awarded total amount of Rs.92,200/- with 15% interest.

4. I have heard Mr. Viren G Dave, learned advocate appearing for

the appellant and Mr. AN Patel, learned advocate appearing for respondents. According to Mr. Dave, the multiplier applied by the Tribunal is on a higher side. According to him, instead of multiplier of 7 years, the Tribunal ought to have taken at 5 years. He has further submitted that so far as the monetary income of the deceased is concerned, it is assessed on a higher side and it is required to be reduced. He has lastly submitted that the rate of interest awarded by the Tribunal is exorbitant. According to him, it ought to have been 12%.

4.1. As against that, Mr. Patel has fully supported the judgment of the Tribunal.

5. Having carefully considered the submissions made on behalf of appellant by Mr. Dave and submissions made on behalf of respondents by Mr. Patel and having closely perused the record and proceedings of the appeal, it clearly appears that deceased who was a lady aged 65 years was waiting for bus at Unjha Bus Stand. She met with an accident when the offending vehicle was being taken in reverse and she ultimately expired. The evidence shows that she was 65 years old, but she was a social worker and at one point of time, member of the Panchayat. The material further shows that after she ceased to be active member of the Panchayat, she diverted her attention to the household work as also to the agricultural, cattle breeding. The claimants have stated her income to be Rs.2,000/- per month, but the Tribunal, after giving all the

necessary concessions, has determined the monthly income at Rs.1,000/- and it has deducted a sum of Rs.200/- from the said amount being the amount which deceased would have spent on herself. There is no serious challenge to this version. It is adequately proved that they owned agricultural field as well as cattle. It also appears that she was lady social worker and at one point of time, member of the Panchayat for 5 years. It is true that judging from the standard of those days, the income assessed by the Tribunal can be said to be slightly on higher side, but there is otherwise no reason for interferring with the said finding. The accident is of the year 1988. When the difference is insignificant, it is not desirable to disturb such finding after almost two decades of the accident. Hence, on this count, submission of Mr. Dave is not accepted.

5.1. Mr. Dave has further submitted that the multiplier of 5 ought to have been applied. But considering the fact that the deceased was hale and hearty and quite active, there is no justifying reason to reduce the multiplier by 3 or atleast 2. The loss of consortium and loss to the estate have been taken into consideration by the Tribunal and it has awarded a sum of Rs.25,000/-. According to Mr. Dave, this is also on higher side. The conventional amount was substantially increased considering the standard of even those days, cannot be said to be higher. Just like the amounts awarded under other heads, even if the argument of Mr. Dave is accepted, the difference that may result from the curtailment of the award would be in the vicinity of Rs.20,000/- to Rs.23,000/-,

which can safely be termed as small amount. In number of such cases in the past, on account of smallness of amount, this Court has declined to interfere. In view of the same, I do not find any merit in the submission of Mr. Dave.

5.2. So far as the issue of negligence is concerned, I have carefully perused the discussions contained in the judgment and it appears that the finding given by the Tribunal on that count is proper and it requires no interference. Hence, this appeal has no merit and it is dismissed.

[Akshay H Mehta, J.]

* Pansala.